

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA

v.

SHANNON L. HAY,

Defendant.

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Case No. 2:05CR00015

OPINION AND ORDER

By: James P. Jones

Chief United States District Judge

William E. Bradshaw, Big Stone Gap, Virginia, for Defendant.

The defendant is charged by indictment returned May 3, 2005, with committing perjury in the course of a probation revocation proceeding held before a magistrate judge of this court on November 19, 2003. *See* 18 U.S.C.A. § 1623 (West 2000). On February 9, 2004, the magistrate judge revoked the defendant's probation on the ground, among others, that the defendant had committed perjury at the November 19, 2003, hearing. He was sentenced to ninety days imprisonment.¹

The defendant has now filed a Motion to Dismiss Indictment, contending that it is a violation of the Double Jeopardy Clause of the Fifth Amendment to prosecute

¹ The defendant was originally convicted in 2002 of the petty offense of cutting and removing trees from government property and placed on five years probation, in addition to a fine and order of restitution.

him for the same conduct that was used in part to revoke his probation in the earlier case.

Based on clear circuit precedent, the defendant's argument is without merit. *See United States v. Woodrup*, 86 F.3d 359, 363 (4th Cir. 1996) ("We hold . . . that the Double Jeopardy Clause does not prohibit the government from criminally prosecuting and punishing an offense which has formed the basis for revocation of a term of supervised release."). The punishment that the defendant received in the revocation proceeding was for his original offense, and not for perjury, which is the subject of the present prosecution. *See id.* at 361.

For these reasons, it is **ORDERED** that the Motion to Dismiss Indictment is DENIED.

ENTER: July 15, 2005

/s/ JAMES P. JONES
Chief United States District Judge